EXHIBIT D

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Attorneys for Petitioner, INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES AND CANADA, LOCAL 720

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

REGION 28

LABOR PLUS, LLC, Employer, And INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES AND CANADA, LOCAL 720, Petitioner.	Case No. 28-RC-150168 **BRIEF OF PETITIONER**

The hearing officer over the objection of the Petitioner allowed briefing on one issue only. That issue is whether the "reasonable expectancy" of employment doctrine applied in this case. The employer has filed a brief addressing all other issues. It addressed the other issues because counsel refused to argue those cases at the conclusion of the record. Thus this brief is a request to reject the employer's brief as going beyond the narrow issue on which the hearing officer allowed briefing. The employer's counsel cannot correct its malpractice of refusing to argue the issues on the record by filing a brief which addresses all other issues which could have been addressed.

We use this brief only to repeat the lengthy argument made at the hearing.

The employer stipulated to an election to be held on May 2. It therefore waived any argument of imminent closure and any other similar doctrine.

On the date of May 2, indisputably employees of the employer worked at the Show Stoppers show at the Wynn. Those employees are listed on Regional Director's Exhibit 1 and are employees 3, 4, 6, 9, 10, 11, 13, 14, 16, 17 and 19.

Whether the remaining employees who voted were employed on that date doesn't affect the outcome of this case. Nonetheless, the Petitioner maintains that they remained employees even though the Wynn may have *subsequent* to May 2 determined that it would pay them. Plainly on May 2 they were working at the show. In the alternative, the Wynn and Labor Plus were joint employers on that date and they were thus employed by Labor Plus.

All of this illustrates that the doctrine of "reasonable expectancy" on which the hearing officer requested briefing has no application. They were employees on that date of the election and that is undisputed.

Whether or not the employees were subsequently terminated, is thus irrelevant for Board purposes. Recently the Board reaffirmed the point that the employer's obligation to bargain "is established as of the date of an election in which a majority of employees vote for Union representation..." See *Fused Solutions, LLC*, 362 NLRB No. 95 (2015) at note 3. This is just a restatement from the fundamental Board law that as of the moment the election is concluded the employer acts at its parallel refusing to bargain and refusing to acknowledge that the workers

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have selected a Union as their representative. See *Mike O'Connor Chevrolet-Buick,* 209 NLRB 701 (1974).

The employer has not ever cited a case and it cannot cite a case for the proposition that the Closure of a facility after an election is conducted should result in the rescission of a certification or the failure to complete the representation process in Section 9. It has not cited a case for that proposition where the employer through its counsel stipulated to an election.

Counsel cites *Sid Eland, Inc.*, 261 NLRB 11 (1982). That involved someone who was on leave before the election and whether that person had any expectancy of returning. That case undermines the employer's position. Or maybe counsel didn't read the case. *Femco Machine Co.*, 238 NLRB 816 (1978) concerned one employee who was terminated before the election. Id at 825. Counsel never read the case. *Plymouth Shoe Co*, 185 NLRB 732 (1970) involved a situation where the Board declined to order a rerun election where the employer had almost completely shut down between the first election and when a second rerun election would be conducted. Counsel did not read the case.

Counsel's citation of these irrelevant cases is shocking but not unexpected. It is further evidence of bad faith and delay.

Indeed the only question left is whether the employer has an obligation to bargain with the Union and that is a matter to be processed under Section 8(a)(5). It is an unfair labor practice issue.

The Board has considered this problem in *Adelphi Communications*, 333 NLRB 145 (2001). The Board declined to dismiss a decertification petition where a successor took over. The Board noted that it would not be proper to deprive the employees of the right to select a representative (or deselect one) because a successor evolves. This governs this case. Counsel for the employer has not cited or commented on this case.

We will address the unfair labor practice issues in a separate proceeding.

In summary, most if not all of the employees remained employed on the date of the election. The employer has not cited a case or any reasoned argument that the subsequent alleged

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closure of the show should void the properly conducted election. Nor has the employer cited a case where there is a joint employer or success situation where employees remain employed that the "reasonable expectancy" doctrine applies.

The "reasonable expectance" of employment doctrine is inapplicable. It applies only to those who are terminated or otherwise not working prior to the date of the election. This is not a doctrine which has any applicability here.

For these reasons the hearing officer should promptly issue a report recommending the issuance of the certification in favor of the Petitioner. The employer's brief should be discarded.

Dated: June 1, 2015

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

/S/ DAVID A. ROSENFELD
By: DAVID A. ROSENFELD

Attorneys for Petitioner, INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE TECHNICIANS, ARTISTS AND ALLIED CRAFTS OF THE UNITED STATES AND CANADA, LOCAL 720

138566/813896

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PROOF OF SERVICE
(CCP §1013)

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On June 1, 2015, I served the following documents in the manner described below:

BRIEF OF PETITIONER

☐ (BY FACSIMILE) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of document(s) to be transmitted by facsimile and I caused such document(s) on this date to be transmitted by facsimile to the offices of addressee(s) at the numbers listed below.

☑ (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from kshaw@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

Gregory E. Smith, Esq. Hejmanowski & McCrea 520 S. Fourth Street, Suite 320 Las Vegas NV 89101 Email: ges@hmlawlv.com Stephanie Stroup Scaffidi Field Examiner National Labor Relations Board, Region 27 Byron Rogers Federal Building 1961 Stout Street, Suite 13-103 Denver, CO 80294 Email: Stephanie.Scaffidi@nlrb.gov	Dianne LaRocca DLA PIPER LLP US 1251 Avenue of the Americas New York, NY 10020 Email: dianne.larocca@dlapiper.com Regional Director National Labor Relations Board, Region 28 2600 N. Central Ave, Suite 1400 Phoenix, AZ 85004-3099

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 1, 2015, at Alameda, California.

/s/ Katrina Shaw
Katrina Shaw

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EXHIBIT E

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Attorneys for Petitioner
IATSE Local 720

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

REGION 28

LABOR PLUS, LLC, Employer, and IATSE LOCAL 720, Petitioner.	No. 28-RC-150168 **IATSE LOCAL 720'S OPPOSITION TO LABOR PLUS, LLC'S MOTION TO DISMISS PETITION**

On April 15, 2015, IATSE Local 720 ("Union") filed a Petition seeking to represent all full-time and regular part-time on-call, stage-hand employees of Labor Plus, LLC ("Employer") in the Wynn ShowStoppers Theater in Las Vegas, excluding "[a]ll other employees, including wardrobe, hair, makeup employees, guards and supervisors as defined in the [National Labor Relations Act.]" The petitioned-for-unit is comprised of 21 individuals.

The Union pushed for an election under the Act in a short time frame pursuant to the new rules. The Employer originally sought to postpone the hearing (and by extension, the election) based on a vague statement that it would not be the employer for much longer. To that end, on April 17th, the Employer gave notice that it expected that Labor Plus would no longer be in place at the Wynn within two weeks. Notwithstanding this claim of two weeks, on the date of the election, May 2nd, Labor Plus remained the employer and the vast majority of the employees who were employed by Labor Plus were eligible to vote, and did vote, in the election.

The Employer challenged each and every ballot on the grounds that it would not be the employer of the employee in the future. This is not valid grounds to challenge a ballot.[1] See Sec. 11392.5, NLRB Case Handling Manual, Part II. The Employer points to the voluntary separation of a number of employees after the election as grounds to support its Motion to Dismiss. This claim is irrelevant as to whether or not Labor Plus was the employer at the time the petition was filed or at the time of the election. The Employer claims that as of May 10th, there are no employees of Labor Plus at this facility. However, Labor Plus, LLC, continues to operate in various Las Vegas theaters. On May 5th, the Union sent a demand to bargain to Labor Plus. At that time, the Union also requested effects bargaining in the event that the employer ceased providing services at the ShowStoppers Theater at the Wynn.

I. PROCESSING OF THE PETITION SERVES A USEFUL PURPOSE

Despite the Employer's claim to the contrary, there continues to be a useful purpose served by proceeding. Pursuant to the Employer's own statement, as of May 5th, 11 of the 21 individuals in the petitioned-for-unit had moved over to the employ of the Wynn. This would be the majority of the individuals employed by the Wynn in the same classifications. By simple math, on May 5th, there were 10 employees still in the employ of Labor Plus. As such, although Labor Plus may no longer be the appropriate employer, there are at least two issues that result in the need to continue processing this case.

First, Labor Plus had an obligation to engage in effects bargaining based on the expected result of the tally of ballots. Failure to engage in requested effects bargaining generally results in a *Transmarine* remedy. See *Transmarine Navigation Corp.*, 170 NLRB 389, 390 (1968), as clarified by *Melody Toyota*, 325 NLRB 846 (1998). The employees in this unit are entitled to a *Transmarine* remedy after it is determined that Labor Plus failed to negotiate the effects of the cessation of work with their union, IATSE 720.

[1] Subsequently, late in the afternoon on May 11th (9 days after the election), the Union received Labor Plus's objections to the election which, in addition to the above issues regarding employee status, also asserts there was board agent misconduct and union electioneering. See 29 C.F.R. § 102.69(a) (objections must be filed within 7 days of the election date to be considered timely).

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Second, the Union is entitled an issuance of certification because the Wynn can be deemed the clear successor and therefore is required to bargain with the Union under established Board law. *NLRB v. Burns International Services, Inc.*, 406 U.S. 272, 279 (1972) (stating that "[i]t has been consistently held that a mere change of employers or of ownership in the employing industry is not such an 'unusual circumstance' as to affect the force of the Board's Certification within the normal operative period if a majority of employees after the change of ownership or management were employed by the preceding employer."). The test for determining whether an employer is a successor employer is summarized as follows: "[a]n employer, generally, succeeds to the collective-bargaining obligation of a predecessor if a majority of its employees, consisting of a "substantial and representative complement," in an appropriate bargaining unit are former employees of the predecessor and if the similarities between the two operations manifest a "'substantial continuity' between the enterprises." *Fall River Dyeing Corp. v. NLRB,* 482 U.S. 27, 41-43 (1987); see also *Spruce Up Corporation*, 209 NLRB 194, 195 (1974) (stating that an employer is a perfectly clear successor if it the new employer either (1) misled employees into believing they would all be retained without a change in their wages, hours or conditions of employment or (2) the new employer failed to clearly announce its intent to establish a new set of conditions prior to inviting former employees to accept employment.)

Here, as confirmed by the Employer's own words in its Motion to Dismiss, the Wynn invited predecessor employer Labor Plus' employees to submit applications and made conditional job offers to perform presumably the same stagehand services at the same location, the Wynn. *Burns*, 406 U.S. at 278-281 (stating "...where the bargaining unit remains unchanged and a majority of the employees hired by the new employer are represented by a recently certified bargaining agent there is little basis for faulting the Board's implementation of the express mandates of § 8(a)(5) and § 9(a) by ordering the employer to bargain with the incumbent union.").

Although all of the data is not yet before the Board, it is evident that the Wynn drew its employees from the majority of Labor Plus' workforce to perform the same stagehand services. See *Spruce Up*, 209 NLRB at 195; *Burns*, 406 U.S. 272. Per the employer's Motion to Dismiss,

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11 of 21 employees in these job titles were employees of The Wynn as of May 5, 2015. Consequently, the Wynn would undoubtedly have a duty to bargain with the Union as a clear successor. See *Burns*, 406 U.S at 278-281. This analysis requires the current petition to continue to be processed.

II. THE ARGUMENT OF THE EMPLOYER IS NOT SUPPORTED BY PRECEDENT

The cases that the Employer cites reflect situations in which the employer would no longer exist in the foreseeable future and the bargaining unit would be disbanded. These cases do not apply to this situation where the bargaining unit continues to exist performing the same work for a different employer.

Although Labor Plus claims that the date of succession of the Employer's provision of services was imminent before the election day, prior to the election they could provide no definite date, and in fact the expectation as expressed in prior communication was far exceeded by the amount of time the employer actually remained in place. In *Plymouth Shoe Company,* 185 NLRB 732 (1970), the employer shut down its manufacturing and production operations and a new corporation opened to perform warehousing and supplying, thus fundamentally changing the operations and job functions of the employees involved. Here, in contrast, the employees are maintaining the same job functions and the nature and character of the Wynn's operations are the same as that of Labor Plus. The other cases the Employer cites are similarly distinguishable, and thus not instructive, as they involve employer operations shutting down completely with no clear successor in place and with no indication that employees would be re-employed. See *Davey McKee Corp.*, 308 NLRB 839, 840 (1992) (stating further that the Board will consider a motion to reinstate a petition "should the petitioned-for unit remain in existence for a substantially longer period of time than is [...] anticipated or should the Employer acquire additional construction projects within the geographical scope of the unit covering the classification of employees described in the petition."); *Luckenbach Steamship Co.*, 2 NLRB 181, 193 (1936); *Fraser-Brace Eng'g Co., Inc.,* 38 NLRB 1263, 1264 (1942); *Cal-Neva Lodge*, 235 NLRB 1167 (1978); *M.B. Kahn Const. Co., Inc.*, 210 NLRB 1050, 1050 (1974); *Marrieta Aluminum, Inc.*, 214 NLRB

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646, 647 (1974). Here, in contrast, there is a clear successor and, as of May 5th, 11 former Labor Plus employees have been re-employed to perform the same job functions as performed under the employ of Labor Plus. Processing this petition serves a useful purpose.

The employer's last argument regarding certification is contrary to Board law by which the obligations to bargain with a union attach from the date of the election regardless of the date certification actually issues. *Bancroft Mfg. Co., Inc., Croft Aluminum Co., Inc., Croft Ladders, Inc., Croft Metal Products, Inc., Lemco Metal Products, Inc.*, 210 NLRB 1019, 1022 (1974) (stating that "an employer who effects a unilateral change after the election, and before certification, without notice to or consultation with the Union, violates that Act."); *W.R. Grace & Co.*, 230 NLRB. 617, 618 (1977) (stating that "[i]t is well established that an employer violates Section 8(a)(5) and (1) when, without first consulting with the union, it makes changes in terms and conditions of employment during the pendency of objections to an election which eventually results in the certification of the union."). The employer's statement that there is not a single employee who would be covered is inaccurate as the employees are entitled to representation for the days between the election and their eventual layoff. The cases the Employer cites concerning the Board's dismissal of petitions where petitioned-for units had only one or no employees are not applicable to the instant case and provide no basis for dismissing the petition. See *Roman Catholic Orphan Asylum of San Francisco*, 229 NLRB 251 (1977); *Griffin Wheel Co.*, 80 NLRB 1471 (1948); *Luckenbach Steamship Co.*, 2 NLRB 193 (1936).

III. CONCLUSION

Based on the above, Employer's Motion to Dismiss should be denied.

Dated: May 20, 2015

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

/S/ Caren P. Sencer
By: CAREN P. SENCER
Attorneys for Petitioner
IATSE Local 720

138567\812787

CERTIFICATE OF SERVICE

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501-1091. On, May 20, 2015, served upon the following parties in this action:

Dianne LaRocca
DLA PIPER LLP US
1251 Avenue of the Americas
New York, NY 10020
Email: dianne.larocca@dlapiper.com

Attorney for Employer

copies of the document(s) described as:

IATSE LOCAL 720'S OPPOSITION TO LABOR PLUS, LLC'S MOTION TO DISMISS PETITION

☑ (BY U.S. MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing with the United States Parcel Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Alameda, California.

☑ (BY EMAIL) On the date executed below, I electronically served the documents(s) described above to the e-mail addresses listed above.

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on May 20, 2015.

/s/ J. L. Aranda
J. L. Aranda

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EXHIBIT F

FORM NLRB-501 (11-88)

FORM EXEMPT UNDER 44 U.S.C. 3512

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
28-CA-155947	July 10, 2015

INSTRUCTIONS
File an original together with four copies and a copy for each additional charged party in Item 1 with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1 EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Labor Plus, LLC and Wynn Las Vegas, LLC

b. Number of workers employed
20+

c Address (street, city, state, ZIP code)
Labor Plus, LLC
5125 West Oquendo Road, #14
Las Vegas, NV 89118

Wynn Las Vegas, LLC
3131 South Las Vegas Blvd.
Las Vegas, NV 89109

d. Employer Representative
Rita Taratko, Labor Coordinator.

Marie Coakley, Asst. Technical Director

e. Telephone No.
(702) 296-4326 Labor Plus

Fax No.

f. Type of Establishment (factory, mine, wholesaler, etc.)
Payroll/Entertainment

g. Identify principal product or service
Payroll/Labor/Entertainment

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (5) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Within the six months immediately preceding the filing of this charge, the above-named employers, by and through its agents, violated the Act when it refused and/or failed to bargain in good faith, and refused and/or failed to provide information pursuant to an information request. Labor Plus, LLC and Wynn Las Vegas, LLC are joint employers and Wynn Las Vegas, LLC is a perfectly clear successor employers. The above-named employers violated the Act when they discriminated/retaliated against employees by terminating their employment for engaging in protected activity.

Relief under 10(j) of the Act is requested.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)
I.A.T.S.E. Local 720

4a Address (street and number, city, state and ZIP code)
3000 S. Valley View, Las Vegas, NV 89102

b. Telephone No.
(702) 309-8052

Fax No.
(702) 873-8120

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization.
International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By _____
Signature of representative or person making charge Kristina L. Hillman
Title Attorney
Address 1001 Marina Village Parkway, Alameda, CA 94501
Telephone No. 510-337-1001
(Fax) 510-337-1023
Date July 10, 2015

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

EXHIBIT G

STEWART WEINBERG
DAVID A. ROSENFELD
WILLIAM A. SOKOL
BLYTHE MICKELSON
BARRY F. HINKLE
JAMES J. WESSER
THEODORE FRANKLIN
ANTONIO RUIZ
MATTHEW J. GAUGER
ASHLEY K. IKEDA •
LINDA BALDWIN JONES
PATRICIA A. DAVIS
ALAN G. CROWLEY
KRISTINA L. HILLMAN ••
EMILY P. RICH
BRUCE A. HARLAND
CONCEPCION E. LOZANO-BATISTA
CAREN P. SENCER
ANNE I. YEN
KRISTINA M. ZINNEN
JANNAH V. MANANSALA
MANUEL A. BOGUES •••
KERIANNE R. STEELE ••
GARY P. PROVENCHER
EZEKIEL D. CARDER ••••
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ROBERTA D. PERKINS, Of Counsel
NINA FENDEL, Of Counsel
TRACY L. MAINGUY, Of Counsel
ANA GALLEGOS, Of Counsel

• Admitted in Hawaii
•• Also admitted in Nevada
••• Also admitted in Illinois
•••• Also admitted in New York
••••• Also admitted in New York and Michigan

June 26, 2015

Dianne LaRocca
DLA Piper LLP US
1251 Avenue of the Americas
New York, NY 10020

Wynn Casino
Monica Marie Coakley
Assistant Technical Director
3131 South Las Vegas Blvd.
Las Vegas, NV 89109

Re: Showstoppers Theater and IATSE Local 720
NLRB Case No. 28-RC-150168

Dear Ms. LaRocca and Mr. Wynn and Ms Coakley:

Now that it is clear that Local 720 is the collective bargaining representative of the employees of the Showstoppers Theater, both Labor Plus, LLC and Wynn Casino need to provide dates when they will be available for negotiations.

We recognize that Labor Plus contends that it no longer employs employees of this theater. It is the position of Local 720 that Labor Plus and Wynn Casino were a joint employer and are the joint employers of those employees. Wynn is also the single employer at this time.

Alternatively, Wynn Casino is the successor to Labor Plus. Not only is it the successor, but it is the perfectly clear successor and was not permitted to change wages, hours and working conditions without bargaining. To the extent however, that Wynn implemented better conditions, the Union is not asking that any better conditions be rescinded.

Please provide a copy of all benefit plans, company policies or procedures which apply to the employees at the Showstoppers Theater.

Please provide an updated list of the employees, phone numbers, addresses, email addresses, classifications and rates of pay.

Please also provide copies of the work schedules for the employees for the period May 1, 2015 to the present.

This is also a reminder that no unilateral changes should be made. No discipline should be imposed without bargaining with the Union.

Please also provide us copies of all payroll records for the employees for the period of May 1, 2015 to the present.

Local 720 looks forward to bargaining with both of you, or with the Wynn Casino towards a Collective Bargaining Agreement covering these employees.

Sincerely,

Kristina L. Hillman

KLH:bg/rfb
opeiu 3 afl-cio(1)